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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.B. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

E065980

(Super.Ct.Nos. J254254, J254255
& J254256)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G.
Pace, Judge. Affirmed.

Brent D. Riggs, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant D.B. (Mother) appeals from the juvenile court's order terminating her parental rights as to three of her children: seven-year-old A.B., five-year-old B.B., and two-year-old M.B.¹ On appeal, Mother argues (1) the juvenile court erred in denying her Welfare and Institutions Code² section 388 petition without a full hearing; and (2) her counsel was ineffective. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

Mother has a history with the San Bernardino County Children and Family Services (CFS) due to her substance abuse. A.B. was taken into protective custody in September 2010 after she accidentally ate a “ ‘marijuana cookie’ ” and Mother brought her into the hospital due to resulting seizures. Mother also admitted to using methamphetamine. A.B. had been a dependent of the court from September 2010 until Mother successfully reunified with her in August 2013.

On April 8, 2014, CFS was notified that Mother and M.B. had tested positive for methamphetamines following M.B.'s birth. M.B. was not eating well, and Mother had no stable housing where the baby could live once discharged from the hospital. Mother reported that she had relapsed and used methamphetamine five days prior because she was homeless and under pressure. A.B. and B.B. were living in the home of D.C.'s

¹ Neither the alleged father of A.B. nor the alleged father of B.B. and M.B. (D.C.) are parties to this appeal.

² All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

mother. D.C.'s mother reported that the children would not be able to stay in her home for more than one or two months. D.C. had a history with CFS with his parental rights terminated as to three of his children in 2005. He also had an extensive history of abusing methamphetamine, and a criminal history involving firearms, drugs, and vehicle theft. Following further investigation, the children were taken into protective custody.

On April 14, 2014, petitions were filed on behalf of the children pursuant to section 300, subdivisions (b) (failure to protect), (g) (no provisions for support as to A.B.'s alleged father), and (j) (abuse of sibling). The following day, the children were formally detained and maintained in their foster home. Mother was provided with supervised visitation.

Mother was raised by two heroin addicted parents who had engaged in serious domestic violence in her presence. She was also a victim of her father's physical abuse. Mother began using methamphetamine at age 13, after the passing of her grandmother.³ Since then, she had used drugs on and off, relapsing due to the stressors of life. She had entered a residential drug program after the April 15, 2014 detention hearing, but left the program within days. CFS referred Mother to the Inland Behavioral Health Services (IBHS) outpatient perinatal program.

During A.B.'s first dependency case, which lasted for three years, Mother completed a six-month inpatient program, a three-month sober living program, and a one-

³ Mother's parents are also deceased; her father died of a drug overdose and her mother of a rapid and aggressive illness. Her parents died within months of each other.

year shelter program for women. She also participated in an intensive outpatient substance abuse program, but relapsed within months of CFS ending A.B.'s first case. Mother was homeless, unmarried, unemployed, and uneducated. She, however, had a strong support system with her brother and sister.

The contested jurisdictional/dispositional hearing was held on May, 28, 2014. At that time, the juvenile court found all the allegations of the petitions to be true except the mental health allegation, which was dismissed. The children were declared dependents of the court and Mother was provided with reunification services and visitation for two hours a week with authority to CFS to liberalize as to frequency and duration.

Mother had continued to use methamphetamine. She had not begun her inpatient substance abuse program until October 2014, when she was again homeless and decided “ ‘things’ ” were bad enough that she needed to make a change. Mother was also pregnant with her fourth child due in March 2015. Her exit date from her drug program was scheduled for January 22, 2015, but since she was pregnant, the drug counselor was helping mother remain at the residential drug program until her baby was born. Mother maintained “fair” visitation attendance, and arrived sober to her visits. She missed seven visits due to her drug use. At times, she was inappropriate and had to be reminded of the visitation rules, causing Mother to become angry; however, she was working on improving her relationship skills.

Meanwhile, the children were stable and developing well in their foster home. They appeared healthy and happy. A.B. had anemia as a result of being exposed to

tobacco, methamphetamines, and alcohol in utero. Additionally, A.B. initially had some behavioral issues with aggression but was continuing to improve and was nicer to her sister.

The six-month review hearing was held on December 1, 2014. At that time, the court continued Mother's services.

On March 18, 2015, CFS filed section 342 petitions on behalf of the children after Mother admitted to the social worker that she had used inappropriate physical discipline while under the influence of methamphetamine when disciplining A.B. over two years ago. Mother explained that she used closed fists to hit A.B. repeatedly, leaving bruises and marks, and a male living with Mother had to separate Mother from A.B. She stated that she hit A.B. because A.B. told Mother " 'no Bitch you do it' " after Mother asked her to help B.B. The next day Mother " 'freaked out' " when she saw the bruises she had inflicted. CFS recommended that the visits should be unsupervised in a supervised setting.

In March 2015, Mother had given birth to her fourth child, J.C., and a section 300 petition was filed on his behalf. J.C. was staying with Mother in her inpatient program under family maintenance services.⁴

⁴ The allegations in the section 300 petition as to J.C. were found true on May 14, 2015. J.C. was declared a dependent of the court and maintained in Mother's custody under family maintenance.

Mother had her first three-hour unsupervised visit with the children at the inpatient rehabilitation center on April 4, 2015. There were no concerns reported to the social worker.

The section 342 jurisdictional/dispositional hearing was continued and combined with the 12-month status review hearing.

By the time of the 12-month review hearing, the social worker recommended continuing Mother's services. Mother was participating in her services and making progress. Mother was to remain in her inpatient program until June 2015, and her case manager had identified a sober living home that would accept Mother and her four children. In addition, Mother's unsupervised visits had been extended to six hours at her inpatient program. Generally, the visits went well; however, it appeared Mother was overwhelmed with watching four children at once and required assistance at times. The foster mother reported A.B. and B.B. began using inappropriate language and had been touching themselves. Mother denied the allegations.

The children had been developing well in the foster home in which they had resided since April 10, 2014. They appeared to be healthy and happy, and the foster mother had been providing for the children's needs. The children reported that their foster mother " 'mama lyn' "takes good care of them. A.B. sometimes used inappropriate language and had been caught touching her "private area." A.B. was referred to therapy.

The 12-month review hearing was held on May 14, 2015. At that time, Mother's counsel requested that the social worker have the authority to return the children to Mother, and minors' counsel requested an approval packet be required for return of the children. The court found the allegations in the section 342 petition true, ordered that the children remain dependents of the court, and continued Mother's services. The court also ordered weekly unsupervised visits in an unsupervised setting including overnight and weekend visits and return of the children by approval packet.

By October 9, 2015, the social worker recommended that the children be placed with Mother under a 29-day extended visit plan. Mother was living in a sober living home at the time, and doing well in her treatment program. Nonetheless, CFS still had some concerns relating to Mother's behavior, attitude with her peers, and use of profanity. In addition, Mother was having a difficult time applying her parenting and coping skills and completing her tasks. Moreover, Mother had not begun therapy because she wanted to be "done" by 1:30 p.m., but the only available therapy sessions were after 2:30 p.m. Mother did not want the late sessions. Arrangements were made for her to enroll in morning therapy sessions, but she would be required to make up an hour of her missed substance abuse program on Fridays. When Mother was notified of this option, she was disrespectful to staff and demoted from level B to level A.

Mother had consistently visited the children and had been allowed to have the children for weekends in her sober living home. The visits were appropriate, despite the

foster mother's concerns.⁵ Mother was utilizing parenting skills, playing with the children, and asking for assistance when needed. The children enjoyed the visits. A.B. reported that she wanted to live with her mother, but she also stated she did not like it when Mother yelled at her or hit her in anger. A.B. was diagnosed with posttraumatic stress disorder as a result of her two removals from Mother. A.B. had recurring memories of past traumatic events and A.B. was worried that her mother would not be successful with family maintenance based on Mother's history. The social worker recommended Mother and A.B. attend family therapy if family maintenance was granted.

At the 18-month status review hearing on October 9, 2015, the court ordered an extended visit for 29 days.

On November 6, 2015, CFS filed an addendum report recommending that the children be returned to their foster home and that a section 366.26 hearing be set. Mother had failed the 29-day extended visit, and was unable to care for the children effectively and keep them safe. At the time of the report, A.B. was six years old, B.B. was four years old, and M.B. was 18 months old. The children had been out of the home for 18 months since their removal in April 2014. Mother was having a difficult time taking A.B. to school and then returning home in time to be picked up for her program. The social worker advised Mother to have herself and the children ready before she dropped off A.B. and then Mother would be picked up at A.B.'s school. Initially, Mother was

⁵ The foster mother had reported ongoing concerns on almost a weekly basis. Upon investigation, the social worker believed that the foster mother tended to exaggerate her complaints and that the foster mother may be too attached to the children.

resistant but then agreed. At an unannounced visit, the social worker found M.B. in a playpen. Mother separated him from the two older girls when they were too “loud” while playing with him. Rather than giving the girls a “time out,” it was easier for Mother to put M.B. in the playpen. CFS then provided Mother with a voucher to purchase a gate to keep M.B. in a room, but Mother used the voucher to purchase food.

On October 23, 2015, Mother called the social worker to tell her that M.B. had walked out of the home and onto the street. Mother left the front door open for air while she was doing B.B.’s hair, and during this time had left M.B. unattended. At first, Mother could not find M.B. and looked all over the house and outside. After she found M.B. walking on the front street, she placed M.B. in the playpen and left him there for four hours that afternoon. When questioned, Mother stated that she usually left him in the playpen for one hour each day. Mother admitted that she loved her son but did not “feel” it. She also did not kiss him and tell him she loved him. She reported that she did not show love to her children by hugging them, kissing them, or telling them she loves them. Mother’s childcare supervisor reported that Mother was short with the children and only showed affection to her youngest son, J.C., and gave B.B. a little hug one time. The supervisor also stated that Mother was not affectionate at all with M.B. Mother stated that the child “urks [*sic*] me.” Also that “I am having issues with [M.B.],” “I am not bonding with [M.B.],” and “He gets me frustrated.” When advised to be more affectionate with her children, she stated “I am not that way.”

On October 26, 2015, Mother reported that she was upset, raised her voice, and spanked A.B. because A.B. refused to put on her pajamas and go to bed. A.B. confirmed that her mother had spanked her, but both she and B.B. stated they were not afraid of their mother and wanted to stay in her care.

The program manager at IBHS reported that Mother was overwhelmed with the children. She made daily comments that she “can not deal with this” and “[i]t is too hard.” At lunch, she yelled at the children. The manager also noted that Mother became defiant at the mention of additional services; that Mother frequently walked out of classes and made up excuses; and that Mother did not take the children to the doctor because she did not want to have to make up the time on a Friday. The manager confirmed Mother’s frustration since the beginning of the 29-day visit.

At the hearing on November 6, 2015, the court terminated the extended 29-day visit and returned the children to the previous foster home.

A contested hearing was held on December 4, 2015. Following testimony from the social worker and Mother and hearing argument from the parties,⁶ the court terminated Mother’s services and set a section 366.26 hearing. The court reduced Mother’s visitation to once a week for two hours and advised Mother of her appellate writ rights.

⁶ During testimony, Mother admitted that she was overwhelmed; that she did not need therapy; and that she did not have a bond with M.B. She claimed that she had asked CFS for help since she was overwhelmed; that she was not bonded to M.B. because he had been removed from her care at birth but that she wanted to be his parent; and that she did not know she was not to use physical punishment.

On December 7, 2015, Mother filed a notice of intent to file a writ petition, but on January 4, 2016, Mother's counsel filed a letter with this court informing the court that the lawyer reviewed the record and found no legal or factual issue upon which to base a writ. This court dismissed Mother's writ petition on January 8, 2016.

The social worker recommended that parental rights be terminated and a permanent plan of adoption be ordered for the children. The children had been living in the prospective adoptive home since April 10, 2014.⁷ The children appeared happy, healthy, and well cared for, with the exception of some behavioral issues. A.B. was extremely aggressive with her siblings and other children, had difficulty sleeping at night, and was to receive services at home and at school. B.B. and M.B. began imitating A.B.'s aggressive behaviors. A.B. reported that she wanted to stay in the home of her prospective adoptive mother, Mrs. R., if she could not live with her mother, and that she loves Mrs. R. Mrs. R. stated that she loved the children, desired to adopt the children, and provide them with stability and security. She was also open to having continuing contact with Mother and the children's half brother, if appropriate.⁸ Mrs. R. and the children were very attached to each other. Mrs. R. met the children's needs and M.B. looked to Mrs. R. for hugs and kisses.

⁷ The report incorrectly states that the children lived in the concurrent adoptive home since November 6, 2015, however, the children were placed in this home when first taken into custody on April 10, 2014.

⁸ The report also notes that Mrs. R. "stated she will not maintain a relationship with the birth parents or sibling, [J.C.,] who resides with birth mother."

On April 11, 2016, Mother filed a section 388 petition with supporting documents, requesting the court to change the order terminating her reunification services and extending the services to the 24-month date. She claimed she had made significant changes during the previous four months by regularly attending drug programs, anger management, and mental health treatment. She further asserted that the changed order would benefit the children because she had her fourth child in her care and wanted all the children to have a relationship with each other and that she had a strong bond with her children, who loved her and knew her as their mother.

On April 13, 2016, the court ordered a prima facie hearing to determine whether the court should grant or deny an evidentiary hearing.

CFS responded that the petition should be denied. Although Mother had completed many programs and had been caring for her young son, she had run out of time for services. The social worker noted that A.B. and B.B. had been out of their mother's care for over two years, having spent more of their lives in foster care than with their mother; and, M.B. had never lived with Mother. The social worker believed that Mother's hard work was not sufficient to guarantee that the children would be able to return to mother within the next six months if she received additional services and that the children had adjusted to Mrs. R., who was willing to adopt all three children.

When questioned, Mother claimed that she had terminated all of her "toxic relationships." However, at her graduation from the perinatal program on March 31, 2016, an old "inappropriate adult acquaintance" was there hugging Mother multiple

times. Mother also claimed that her relationship with M.B. had improved; that he would run to her and called her “mom”; and that she and M.B. were interacting more and she was spending more “one on one” time with him. Mother recognized that she had left M.B. in the playpen because she did not “want to deal with him” at the time, as well as her error in leaving the front door open. Mother wanted another 29-day visit and stated she would not be as stressed because she only attended outpatient programs three times a week for one and a half hours. Mother also claimed that at visits she spent equal time with the children.

However, on April 25, 2016, the foster agency informed the social worker that Mother was not able to divide equal attention to all of the children during her visits; that she paid the most attention to A.B.; that at times Mother would call M.B., but he would rarely go to her; that during visits, Mother spent more time with her son J.C.; that M.B. only went to Mother to receive a snack; and that Mother never sat with M.B. during a movie. The agency worker also stated that at the beginning of the visits, the children never ran to Mother for hugs, rather, Mother initiated the hellos and tried to hug them; and that Mother spent her time gathering information rather than enjoying her time with the children. In addition, A.B. had begun to ignore Mother lately and told the social worker that she did not want to visit with her mother anymore. The social worker concluded that with Mother’s inability to manage the demands of parenting more than one child at a time, and the need for the children to have a stable home, returning the children to Mother would be detrimental.

A hearing on Mother's section 388 petition was held on April 29, 2016. At that time, the court clarified that the purpose of the 388 hearing was to determine if there was even a prima facie case. The court recognized a prima facie case for "changing" circumstances, not changed, given the length of the case and its history. Furthermore, the court stated that there was not a prima facie case and that it was in the best interest of the children. The court then invited argument from Mother's counsel. Mother's counsel argued that Mother had made significant changes in the last few months, and that she was able to maintain her sobriety. Counsel concluded that there was sufficient evidence to establish a prima facie case for an evidentiary hearing. Minors' counsel argued that Mother's circumstances were changing, but not changed; that there was not a probability that the children would be returned to her care; and that the children needed permanence that Mother had not been able to provide. CFS argued that although Mother had made progress, she was not able to handle all of the children together at one time; that Mother was not ready to have the children returned, which was the court's only option since the children were removed two years ago; and that to delay permanency for the children with additional services to mother or another 29-day visit was not in the children's best interest. The court concluded that Mother's circumstances were changing, which the court applauded, but were not changed and that it was "not even close" it was in the best interest of the children.

The court thereafter proceeded to the 366.26 hearing. The court found no exception to adoption, the children adoptable, and terminated parental rights. This appeal followed.

II

DISCUSSION

Mother argues the juvenile court erred in denying her section 388 petition without a full evidentiary hearing. We disagree.

Under section 388, a parent may petition the juvenile court to modify its previous orders upon the grounds of new evidence or changed circumstances. (§ 388, subd. (a).) The juvenile court may summarily deny a section 388 petition if the petition fails to make a prima facie showing either (1) of a change of circumstances or new evidence, or (2) that the requested change would promote the best interest of the child. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413-1414.) A hearing “is only to be held if it appears that the best interests of the child may be promoted by the proposed change of order, which necessarily contemplates that a court need not order a hearing if this element is absent from the showing made by the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 807.) We review the summary denial of a section 388 petition for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460 (*Angel B.*).

Even if Mother provided sufficient evidence of changed circumstances to warrant a hearing, she did not meet her burden of showing that granting her section 388 petition

and reinstating reunification services with another 29-day extended visit was in the children's best interest. "[I]f a parent makes a prima facie showing of a change of circumstance such that a proposed change in custody might be in the child's best interest, then the juvenile court must hold a hearing." (*Angel B.*, *supra*, 97 Cal.App.4th at p. 461, italics omitted.) Whether Mother made a prima facie showing entitling her to a hearing depends on the facts alleged in her petition, as well as undisputed facts established by the court's own file, such as the child's age, the nature of the existing placement, and when the child became a juvenile dependent. (*Ibid.*)

In *Angel B.*, *supra*, 97 Cal.App.4th 454, the court affirmed the juvenile court ruling denying the mother a hearing on her section 388 petition based on findings that the mother failed to make the requisite prima facie showing of changed circumstances and that the proposed change in custody was in the child's best interest. The court reasoned that, "there was no evidence that Mother was ready to assume custody of Angel or provide suitable care for her; while she had completed the drug program, the time she had been sober was very brief compared to her many years of drug addiction (a concern expressed by the social worker), and in the past she had been unable to remain sober even when the stakes involved were the loss of her other child. Nor was there evidence that she had a housing situation suitable for Angel, or any arrangements for child care while she worked. And . . . there was no evidence that Angel preferred to live with Mother rather than with the foster family." (*Angel B.*, at p. 463.)

Likewise, here, there was no evidence showing that granting Mother's section 388 petition was in the children's best interest. There was no evidence that Mother was ready to assume custody of the children or provide suitable care for them; while she had completed a drug program and was living in a sober home, the time she had been sober was brief compared to her many years of drug addiction, and in the past she had been unable to remain sober even when the stakes involved were the loss of her children. There also was no evidence that Mother had a bond with the children, especially M.B.; rather, the record clearly demonstrates that the children were strongly attached to Mrs. R. The children had formed a parent-child relationship with Mrs. R. and referred to her as " 'mama lyn.' " In fact, as noted by the social worker, A.B. and B.B. had spent more of their young lives in the home of Mrs. R. than with Mother; and M.B. had never lived with Mother, having being placed in Mrs. R.'s home following his birth.

In addition, as explained in *Angel B.*, "a primary consideration in determining the child's best interest is the goal of assuring stability and continuity. [Citation.] When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. [Citation.] That need often will dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child." (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.)

The court in *Angel B.* noted that the burden of proof "is a difficult burden to meet in many cases, and particularly so when, as here, reunification services have been terminated or never ordered. After the termination of reunification services, a parent's

interest in the care, custody and companionship of the child is no longer paramount.

[Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability. [Citation.] In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child [citation]; such presumption obviously applies with even greater strength when the permanent plan is adoption rather than foster care. A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, what is in the best interest of the child.” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.)

Here, Mother’s services had been terminated for nearly five months by the time she filed her section 388 petition, which was made on the eve of the section 366.26 hearing. Mother had received over 20 months of services from the time the children were detained in April 2014 to the time her services were terminated in December 2015. Despite receiving nearly two years of services, Mother was still living in a sober home and continued to have no independent means of supporting herself or her children. In addition, her sobriety, while commendable, was short compared to her long-standing drug history. Moreover, she had admitted only six months earlier that she could not handle all four children at one time by herself. Mother’s arguments to the contrary are unavailing. At the point of the section 366.26 hearing, the children’s interest in stability was the court’s foremost concern and outweighed any interest in reunification. The prospect of additional reunification services and extended visitations to see if Mother would and could do what was required to regain custody would not have promoted stability for the

children, and thus would not have promoted the children's best interest. (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.)

In *Angel B.*, the facts presented by the section 388 petition showed that the mother was “doing well, in the sense that she has remained sober, completed various classes, obtained employment, and visited regularly with Angel.” (*Angel B.*, *supra*, 97 Cal.App.4th at pp. 464-465.) The *Angel B.* court also assumed, for the sake of the appeal, that the mother's resolve was different, and that she would be able to remain sober, remain employed, become self-supporting and obtain housing. Even so, the *Angel B.* court found that such facts were not legally sufficient to require a hearing on her section 388 petition. (*Angel B.*, at pp. 464-465.) The court reasoned that “there is a rebuttable presumption that, in the absence of continuing reunification services, stability in an existing placement is in the best interest of the child, particularly when such placement is leading to adoption by the long-term caretakers. [Citation.] To rebut that presumption, a parent must make some factual showing that the best interests of the child would be served by modification.” (*Id.* at p. 465.)

Here, as in *Angel B.*, Mother did not make such a showing. She did not present any evidence that delaying adoption by providing Mother with additional reunification services or an extended 29-day visit was in the children's best interest. We therefore

conclude the juvenile court did not abuse its discretion in summarily denying Mother's section 388 petition.⁹

B. *Ineffective Assistance of Counsel*

Mother argues she received ineffective assistance of counsel after she filed her notice of intent to file a writ petition. Specifically, she argues counsel was ineffective for failing to file a writ petition because counsel "failed to properly analyze the applicable law (cf. *In re S.D.* (2002) 99 Cal.App.4th 1068, 1080) and did not recognize section 352, subdivision (a), as the mother's escape valve (*In re Elizabeth R.* [(1995)] 35 Cal.App.4th [1774,] 1798-1799 [*Elizabeth R.*])."¹⁰

Mother has the burden of showing that "counsel's representation fell below an objective standard of reasonableness." (*Strickland v. Washington* (1984) 466 U.S. 668, 688; *In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1711.) We reverse for ineffective assistance of counsel "only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for his act or omission." (*People v. Fosselman* (1983) 33 Cal.3d 572, 581.) If the record is silent on the reason for counsel's omission, the case must be affirmed "unless counsel was asked for an explanation and failed to provide one,

⁹ Because we find the juvenile court did not abuse its discretion in denying the section 388 petition without an evidentiary hearing, we need not address Mother's arguments related to this issue.

¹⁰ Because we address Mother's claim on the merits, we need not address CFS's alternative claim Mother waived this issue.

or unless there simply could be no satisfactory explanation.” (*People v. Pope* (1979) 23 Cal.3d 412, 426.¹¹)

Here, the record is silent as to the reason why counsel did not file a writ petition. Nonetheless, Mother contends there can be no satisfactory explanation for the omission because at the 18-month hearing, a different counsel “had vigorously sought more time for the mother.” This contention ignores the reasonable possibility that a writ petition was not filed because counsel concluded that writ review would have been futile and convinced Mother to abandon her desire to pursue it. (See Bus. & Prof. Code, § 6068, subd. (c) [it is an attorney’s duty to “counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just”]; *People v. Constancio* (1974) 42 Cal.App.3d 533, 546 [“It is not incumbent upon trial counsel to advance meritless arguments or to undertake useless procedural challenges merely to create a record impregnable to assault for claimed inadequacy of counsel”].)

Mother suggests that a writ petition would not have been futile because her appointed counsel failed to properly analyze applicable law and did not recognize section 352, subdivision (a), as her “escape valve.” She relies on *Elizabeth R.*, *supra*, 35 Cal.App.4th 1774 to support her arguments in her briefs. Mother’s claim exalts form over substance by (1) ignoring that Mother was provided with reasonable reunification

¹¹ Disapproved on another ground in *People v. Berryman* (1993) 6 Cal.4th 1048, 1081, fn.10, which also was overruled on a different ground in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn.1.

services, and (2) assuming her circumstances were exceptional to warrant extension of services beyond the 18-month hearing.

Reunification services may be extended beyond the 18-month limitation period where the juvenile court finds that reasonable services were not provided or if exceptional circumstances warrant an extension of services. (*Elizabeth R.*, *supra*, 35 Cal.App.4th at p. 1787, 1798-1799 [the best interests of the child would be served by a continuance (see § 352) of an 18-month review hearing]; *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1209, 1211 [reasonable services were not offered]; *In re Carolyn R.* (1995) 41 Cal.App.4th 159, 167 “[a] court may extend the 18-month maximum for reunification efforts only under very limited circumstances” such as when no reunification plan was ever developed for the parent[.])

In *Elizabeth R.*, the mother was hospitalized for mental health issues during most of the reunification period. (*Id.* at p. 1777.) The juvenile court was impressed with the mother’s progress but believed it had no choice but to terminate reunification services at the 18-month review hearing. (*Id.* at p. 1783.) The Court of Appeal reversed, holding that, although the mother had never brought a section 352 motion for a continuance of hearing, under the “unusual” circumstances of that case, section 352 provides an “emergency escape valve in those rare instances in which the juvenile court determines

the best interests of the child would be served by a continuance of the 18-month review hearing.”¹² (*Id.* at p. 1798-1799.)

Unlike *Elizabeth R.*, there are no special circumstances to extend services. This is not that rare case. Mother already had more than 18 months of substantial and intensive services, including the extended 29-day visit. Despite these services, Mother was still unable to safely and effectively care for all four of her children at one time. There were no extraordinary circumstances present that would allow the juvenile court to extend services. “[W]hile the dependency scheme generally requires that parents be offered reunification services, the Legislature has limited those services to ‘a maximum time period not to exceed 12 months,’ which under certain circumstances may be extended to 18 months. (§ 361.5, subd. (a).)” (*In re Zacharia D.* (1993) 6 Cal.4th 435, 446.) Although extenuating circumstances may justify extending services beyond the 18-month cut-off period, this is not an *Elizabeth R.* case. (*Elizabeth R.*, *supra*, 35 Cal.App.4th at p. 1799; *Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 954.)

¹² Section 352 authorizes a juvenile court, “[u]pon request,” to “continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor.” (§ 352, subd. (a).) To obtain a continuance of a hearing, the requesting party must file written notice “at least two court days prior to the date set for hearing” and must make an evidentiary showing of “good cause.” (*Ibid.*) Further, any continuance must be limited to the “period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.” (*Ibid.*) This section does not authorize a court to make an affirmative order resuming or extending reunification services beyond the time limits established by statute.

For this reason, appointed counsel properly could have concluded there were no arguable issues to be raised in a writ petition. Hence, the failure to file such a petition did not constitute ineffective assistance of counsel.

Even if we assume, for the sake of argument, counsel's conduct fell below the prevailing standard of care, we conclude there was no prejudice to Mother. To demonstrate ineffective assistance of counsel, Mother is required to demonstrate both that counsel's representation fell below an objective standard of reasonableness and resulted in prejudice. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) "Thus the parent must demonstrate that it is 'reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citation.]" (*Id.* at p. 1668.) It is not necessary to examine whether counsel's performance was deficient before evaluating prejudice. (*In re N.M.* (2008) 161 Cal.App.4th 253, 270.)

Here, Mother's claim of ineffective assistance of counsel fails to show how she was prejudiced by appointed counsel's failure to file a writ petition. As explained above, this is not an *Elizabeth R.* case. (*Elizabeth R.*, *supra*, 35 Cal.App.4th at p. 1799.) Moreover, it was not in the children's best interest to extend Mother's services or provide her with an additional 29-day extended visit to demonstrate she can safely and effectively care for all four of her children on her own. Mother received nearly two years of service from the time the children were detained in April 2014 to the time of the April 29, 2016 section 366.26 hearing. Despite the services received, Mother was still living in a sober home, did not have employment or an independent means of supporting herself, and was

unable to show she could safely care for all four of her children. At this stage in the proceedings, the children require permanency and stability.

Accordingly, we reject Mother's claim that she received ineffective assistance of counsel after she filed her notice of intent to file a writ petition.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

MILLER

J.